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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.53 OF 2007

Liyakat Ali Niyamat Ali Kazi Applicant
versus
Ahmed Haji Abdul Karim & anr. Respondents

Mr.P.N.Joshi for applicant.

CORAM : A.S.OKA, J.

DATE : 28th March 2007

PC :

1. Heard Shri Joshi for the petitioner. The challenge in this Civil Revision Application is to the order dated 28th February 2007 passed by the learned Civil Judge, Junior Division, Manmad by which application for substitution made by respondent at Exhibit-30 has been allowed.

2. In the application at Exhibit-30 it was contended that the suit was earlier filed on behalf of a trust by its Chairman. It is contended that on the demise of the Chairman, the present respondent Ahamed Haji Abdul Karim has been elected as the Chairman and, therefore, his

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name should be incorporated in the plaint in place of the earlier Chairman.

3. The learned counsel for the petitioner submitted that the suit in the present form is not maintainable. He submitted that the predecessor of the respondent had not instituted the suit on behalf of the trust. He submitted that the present respondent could not have been elected as Chairman in accordance with the Rules and Regulations of the trust. He submitted that the application for substitution could not have been allowed unless it was established that the respondent was entitled to be appointed as the Chairman. He pointed out that another revision application is pending in this Court where issue of maintainability and jurisdiction has been raised by the petitioner.

4. I have considered the submissions. The result of the impugned order is that the name of the respondent Ahmed Haji Abdul Karim is allowed to be substituted in place of deceased Haji Karim. Whether the suit is maintainable or not and whether the predecessor of the respondent could have instituted the suit are the questions which are always open to be decided at

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appropriate stage by the Trial Court. Whether the present respondent can represent the trust is also a question which can also be decided by the Trial Court after parties lead evidence. As of today the respondent has been permitted to prosecute the suit.

5. No case for interference with the impugned order is made out. Subject to what is stated above, the revision application is rejected. It is made clear that all questions which are referred to in this order are expressly kept open for being decided at the appropriate stage. Liberty to the petitioner to file additional written statement to the amended plaint.

(A.S.OKA, J.)